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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE CARDONA,

Defendant and Appellant.

B213511

(Los Angeles County  
Super. Ct. No. VA 106446)

THE COURT: \*

Jorge Cardona (appellant) appeals from the trial court's denial of his demurrer to the allegations contained in both charged offenses that the firearm found on his person was not registered to him. After denial of his demurrer and a court trial, appellant was convicted of carrying a loaded firearm that was not registered to him in violation of Penal Code section 12031, subdivision (a)(1)<sup>1</sup> (count 1) and of having a concealed firearm, not registered to him, on his person in violation of section 12025, subdivision (a)(2). Appellant admitted the allegation that he was out on bail or on his own recognizance within the meaning of section 12022.1 when he committed the offenses. The trial court

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\* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

<sup>1</sup> All further references to statutes are to the Penal Code unless stated otherwise.

sentenced appellant to the midterm of two years in count 1, suspended execution of sentence, and placed appellant on formal probation for a period of three years under terms and conditions of probation, which included serving 60 days in jail (time served). The trial court stayed the sentence on count 2 pursuant to section 654. The trial court also stayed a two-year sentence on the out-on-bail allegation.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an “opening brief” containing an acknowledgment that he had been unable to find any arguable issues. On April 28, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

Prior to his court trial, appellant submitted on the evidence produced at his preliminary hearing on July 21, 2008. Deputy Armando Hernandez testified that on July 6, 2008, he watched his partner, Deputy Zuniga, search appellant. Deputy Zuniga found a black sock containing a semiautomatic pistol on appellant’s person. The gun was loaded and appeared to be in good working condition. Deputy Hernandez checked the serial number of the gun in the automated firearms system. The gun was not registered.

At a subsequent proceeding, the trial court declared a doubt as to appellant’s mental competence pursuant to section 1368, and two doctors were appointed to evaluate appellant. Both doctors found that appellant was competent to stand trial, and the trial court found that appellant was competent on November 20, 2008.

On December 17, 2008, appellant moved to withdraw his not guilty plea and enter a demurrer to the enhancement allegations in counts 1 and 2 that “the firearm was not registered to the defendant.” The demurrer alleged that the facts stated did not constitute a public offense, pursuant to section 1004, subdivision 4. The demurrer asserted that prosecution and increased punishment for possessing a firearm when one is not the registered owner of the firearm violated due process, since mens rea cannot be presumed. Appellant argued that the registration scheme for concealable firearms enacted by the Legislature does not affirmatively require an individual gun owner to register the firearm with the Department of Justice, except under very limited circumstances. Thus, the fact

that the firearm may not be listed with the Department of Justice cannot be necessarily attributed to that owner by presumption. Furthermore, the statutory scheme states that persons exempt from reporting acquisition or ownership of a firearm *may* report it to the Department of Justice, but also subjects the gun owner to criminal felony liability if he or she chooses not to register the handgun, which constitutes a violation of equal protection. The trial court, after hearing argument, denied the demurrer.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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